

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

GUIDELINES FOR BINDING ARBITRATION:

**Binding Arbitration under Local Civil Rule 16.3, Supp. § 5.12 -
Optional Waiver of Trial de Novo; Consent to Voluntary Binding Arbitration**

1. Review LCvR16.3, Supp. § 5.1 et seq., especially, § 5.12 and § 12.1. This will be your final forum.

This procedure should provide cases already filed in this Court with a speedy yet inexpensive dispute resolution forum using consensual/voluntary binding arbitration. Remember that provisions of state and federal law governing review of awards rendered in voluntary, binding arbitration shall govern.

2. Request for Binding Arbitration. You may jointly file a motion requesting binding arbitration and, depending on the assigned judge's requirements or particularities of the case, the motion could request to stay the case pending the results of the arbitration or ask that the case be administratively closed for a sufficient length of time to complete the arbitration. The procedure requested may also depend on, for example, whether you have a side settlement agreement and are pursuing a "high-low arbitration," whether you are requesting arbitration for only a portion of the case, or whether it will resolve the entire case.

3. Agreement of all parties and counsel to pursue binding arbitration under the local rules and program administration of the Court. This agreement should be demonstrated by signing and filing a pleading or form entitled Consent to Proceed to Voluntary Binding Arbitration in accordance with the court's local rules and with the signature of all counsel and parties. A pleading/form entitled Stipulation for Waiver of Trial de Novo is also usually signed and filed to insure no confusion with the court's non-binding, settlement oriented arbitration program. This is a prerequisite for formalizing your use of the court's Arbitration program as well as allowing approval of this procedure by the assigned judge

4. Selection of Arbitrator(s)/Requisite Forms. Typically you will receive a list of ten (10) names of arbitrators on our panel of arbitrators usually with subject matter knowledge of the case type and counsel can rank order the candidates for selection (as with the non-binding arbitration program) or counsel may agree on either one (1) or (3) arbitrator(s) from the list of 10 or from the entire panel. Counsel may request a copy of the entire panel list. Under our court's program administration, if the parties wish three arbitrators, all parties must agree and sign a Stipulation to Arbitration before a Panel of Three Arbitrators. (Court's form). If you wish some other selection procedure, please discuss this with the ADR Administrator. We no longer allow the process of one side selecting their own arbitrator and those arbitrators selecting the third, a neutral arbitrator. Of course each arbitrator(s) must complete a conflicts check and once we have completed that process, we can set the hearing. If you wish this conflict of interest disclosure to be in writing, please let the ADR Administrator or staff know and that will be provided.

5. Arbitration Hearing Date and Place. Typically the parties tell the ADR staff their best time for the arbitration hearing to be scheduled. However, it sometimes depends on the availability of the chosen arbitrator(s). Once the arbitrator and date are selected, the court ADR staff usually makes the arrangements for the hearing to be held at the courthouse in a courtroom or other suitable hearing room. Then the Arbitration Hearing Order will be entered.

6. Compensation of Arbitrators in a Binding Arbitration. For a voluntary, binding arbitration through the court's program, fees may be paid and arbitrators may be compensated as follows: (1) as in non-binding arbitration - \$150.00 per hearing for a single arbitrator, \$100.00 each for a panel of three (this would most

likely be agreed to for a very short hearing); (2) fees can be negotiated with the arbitrator(s), shared equally by all the parties and, unless otherwise agree to by counsel and the arbitrator(s), payable at the time of the arbitration hearing; and (3) in special circumstances, for protracted arbitration hearings, and if requested by counsel and approved by the Court, an arbitrator's fee may be paid from the court's funds designated for non-binding arbitration, if such funds are available.

7. Hearing Expectations. Normally all hearings under our arbitration rules, whether binding or non-binding, are intended to be more informal than a full trial and intended to take less time. Typically a hearing lasts ½ to one day but usually no more than 2 days. A limited number of witnesses are allowed. Remember that your clients must be present. (LCvR16.3, Supp. § 5.5). The arbitrator, with suggestions from counsel, will set the parameters of the hearing in terms of time allowed, witnesses, and extent of examination of witnesses, how you wish other evidence to be handled so all evidence is offered on a more informal basis again to save time and costs. If a recording or transcript of this hearing is desired, the party so desiring must make the arrangements. (see LCvR16.3, Supp. § 5.8(c)).

A "pre-trial" conference with the Arbitrator(s) is encouraged - can be by telephone conference - and usually is conducted at an agreed time prior to the hearing. Arbitration summaries and stipulations are due to the arbitrators 10 days prior to the hearing. Although normally only five pages in length, for purposes of a binding arbitration, you would be allowed a longer summary if necessary. The purpose is to educate the arbitrator(s) about the facts and law applicable to your case, analogous to short trial brief.

8. After the Hearing - Award and Judgement. Once the arbitrator(s) renders an award, it will be entered as the judgment in the case in accordance with Fed. R. Civ. P. 58. If there is a side agreement of any nature concerning any further disposition of the case, it is strongly suggested that this be in writing so that no problems will arise. Note that for this program, costs, interest and attorneys fees are not part of the award unless specifically made so - see LCvR16.3, Supp. § 5.9(d) - and you may wish to address this in your agreement to consent to arbitration, other agreement or with your arbitrator(s) while determining the scope/parameters of the hearing.

9. Settlement. If settlement should occur prior to the hearing, please advise the Court - ADR staff and staff of assigned judge as well as the arbitrator(s).

10. Forms pertinent to this process for counsel and parties are: Consent to Binding Arbitration, Stipulation and Waiver of Trial De Novo, possibly the Stipulation Agreement to Panel of Three Arbitrators, either the Ranking List form or, if all agree to a specific Arbitrator, the Selection of Arbitrator form.

QUESTIONS:

Please call the ADR Department: (405) 609-5078